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8
9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 1H 2006 640

13 SUSAN MARIA MARKLEIN
8032 7th Street, Apt. #3
14 Buena Park, CA 90621

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California
21 (Board).

22 2. On or about November 21, 2006, the Board received an application for a
23 Respiratory Care Practitioner license from SUSAN MARIA MARKLEIN (Respondent). On or
24 about November 12, 2006, Respondent certified under penalty of perjury to the truthfulness of
25 all statements, answers, and representations in the application. The Board denied the
26 application on November 20, 2007. On or about December 6, 2007, the Board received a letter
27 from Respondent requesting a hearing in regard to the denial of her application.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.”

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

7. Section 3750 of the Code states: “The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.”

“...”

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.”

1 “...”

2 8. Section 3750.5 of the Code states: “In addition to any other grounds
3 specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or
4 license holder who has done any of the following:

5 “(a) Obtained or possessed in violation of law, or except as directed by a
6 licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or
7 furnished or administered to another, any controlled substances as defined in Division 10
8 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as
9 defined in Article 2 (commencing with section 4015) of Chapter 9 of this code.”

10 “(b) Used any controlled substance as defined in Division 10 (commencing
11 with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article
12 2 (commencing with section 4015) of Chapter 9 of this code.”

13 “...”

14 9. Section 3752 of the Code states: “A plea or verdict of guilty or a
15 conviction following a plea of nolo contendere made to a charge of any offense which
16 substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is
17 deemed to be a conviction within the meaning of this article. The board shall order the license
18 suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed,
19 or the judgment of conviction has been affirmed on appeal or when an order granting probation
20 is made suspending the imposition of sentence, irrespective of a subsequent order under
21 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and
22 to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
23 information, or indictment.”

24 10. Section 3754 of the Code states: “The board may deny an application
25 for, or issue with terms and conditions, or suspend or revoke, or impose probationary
26 conditions upon, a license in any decision made after a hearing, as provided in Section 3753.”

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11. California Code of Regulations, title 16, section 1399.370, states: “For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.”

“(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.”

“...”

COST RECOVERY

12. Section 3753.5, subdivision (a) of the Code states: “In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

13. Section 3753.7 of the Code states: “For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.”

14. Section 3753.1 of the Code states: “(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.”

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of a Crime Substantially Related to the Qualifications,
3 Functions and Duties of a Respiratory Care Practitioner)

4 15. Respondent's application is subject to denial under sections 3710, 3718,
5 3732, 3750, subdivision (d), 3752, 3754, and California Code of Regulations, title 16, section
6 1399.370, subdivision (b), in that Respondent has been convicted, upon her plea of guilty, of a
7 crime substantially related to the qualifications, functions, or duties of a respiratory care
8 practitioner, as more particularly described in Paragraphs 16, 17, 18, and 19, below.

9 16. On or about August 11, 1987, Respondent was convicted upon her plea
10 of guilty of violating Penal Code sections 488 and 666 [petty theft], a misdemeanor, for which
11 Respondent was sentenced to serve nine months in the county jail.

12 17. On or about August 9, 1991, Respondent was convicted upon her plea of
13 guilty of violating Penal Code sections 488 and 666 [petty theft] with prior convictions, a
14 felony, and Penal Code section 459 [burglary], a felony. The circumstances are as follows:

15 a. On or about July 12, 1991, Respondent entered a drug store with
16 intent to steal, and then stole batteries from the store. Respondent admitted to having
17 previous theft convictions on July 10, 1989 and March 18, 1988 and serving jail time on
18 each of these prior convictions.

19 b. On or about August 9, 1991, Respondent was placed on three
20 years probation, with 360 days local jail time as a condition of probation.

21 18. On or about June 14, 1999, Respondent was convicted upon her plea of
22 guilty of violating Penal Code section 496, subdivision (a) [receiving stolen property]. The
23 circumstances are as follows:

24 a. On or about May 30, 1999, a police officer pulled over a vehicle
25 in which Respondent was a passenger for a broken tail light. During the traffic stop,
26 Respondent attempted to conceal something on the floorboard of the passenger area of
27 the car. A search of the car revealed 31 pairs of brand new working gloves that had
28 been stolen from a nearby business. In her plea, Respondent admitted to knowing the

1 property was stolen.

2 b. On or about June 14, 1999, Respondent was placed on three
3 years probation with a condition to serve 24 days in county jail.

4 19. On or about February 8, 2000, Respondent was convicted upon her plea
5 of guilty of violating Health and Safety Code section 11350, subdivision (a) [possession of a
6 controlled substance], a felony, and Health and Safety Code section 11364 [possession of drug
7 paraphernalia], a misdemeanor. The circumstances are as follows:

8 a. On or about January 25, 2000, police officers found heroin,
9 cocaine, and syringes in Respondent's apartment during a probation check of
10 Respondent. During the probation check, Respondent admitted to police that she had
11 used heroin earlier that day, and she further admitted that she used heroin for twenty
12 years.

13 b. On or about February 8, 2000, Respondent was sentenced to state
14 prison for a term of 16 months.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

16 (Fraudulent, Dishonest, or Corrupt Act Substantially Related to the
17 Qualifications, Functions, and Duties of a Respiratory Care Practitioner)

18 20. Respondent's application is further subject to denial under sections
19 3710, 3718, 3732, 3750, subdivision (j), and 3754, in that she has engaged in a fraudulent,
20 dishonest, or corrupt act substantially related to the qualifications, functions, and duties of a
21 Respiratory Care Practitioner. The circumstances are as follows: Paragraphs 16, 17, and 18,
22 above, are incorporated by reference as if fully set forth herein.

23 THIRD CAUSE FOR DENIAL OF APPLICATION

24 (Possession of a Controlled Substance)

25 21. Respondent's application is further subject to denial under sections
26 3710, 3718, 3732, 3750.5, subdivision (a), and 3754, in that Respondent obtained or possessed
27 in violation of law a controlled substance as defined in Division 10 (commencing with Section
28 11000) of the Health and Safety Code, or a dangerous drug as defined in Article 2

1 (commencing with section 4015) of Chapter 9 of the Business and Professions Code. The
2 circumstances are as follows: Paragraph 19 is incorporated by reference as if fully set forth
3 herein.

4 FOURTH CAUSE FOR DENIAL OF LICENSE

5 (Use of Controlled Substance)

6 22. Respondent's application is further subject to denial under sections
7 3710, 3718, 3732, 3750.5, subdivision (b), and 3754, of the Code, in that Respondent used a
8 controlled substance as defined by Division 10 (commencing with Section 11000) of the Health
9 and Safety Code, or a dangerous drug as defined in Article 7 (commencing with Section 4210)
10 of Chapter 9 of the Code. The circumstances are as follows: Paragraph 19, above, is
11 incorporated by reference as if fully set forth herein.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters
14 herein alleged, and that following the hearing, the Board issue a decision:

- 15 1. Denying Respondent's application for a Respiratory Care Practitioner
16 License;
- 17 2. Directing Respondent to pay the Respiratory Care Board of California
18 the costs of the investigation and enforcement of this case, and if placed on probation, the costs
19 of probation monitoring;
- 20 3. Taking such other and further action as deemed necessary and proper.
- 21

22 DATED: April 2, 2008

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24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
Respiratory Care Board of California
State of California
Complainant

27 SD2007803339
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